

## REMARKS

In the Office Action mailed June 25, 2004, the Examiner rejected claims 22-24, 29, 30, 32-34, 39, 40 and 42-44. By way of the foregoing amendments and the markings to show changes, Applicants have amended claims 22, 24, 29-30, 32, 34 and 39-40, canceled claims 35-38 and 41 and added new claims 45-50. The foregoing amendments are taken in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art.

### I. Information Disclosure Statement

The Office Action has apparently suggested that copies of certain references in the Information Disclosure Statement were not supplied. Applicants contend that such copies were properly submitted where required. Applicants resubmit herewith copies of the references not cited in the previous applications. Applicants are not resubmitting copies of all the references as copies were already submitted in the parent application. Applicants also resubmit copies of the 1449, PTO/SB/08A and PTO/SB/08B forms of which consideration of the references is requested.

### II. Claim Objections

The Office Action objected to claims 29-30, 39-40 and 44 for informalities.

The Office Action suggested that the term "material" should be added after "foam" in line 2 of claims 30, 40 and 44. Such change has been made.

The Office Action suggested that "said" should be inserted before "ribs" in claims 29 and 39. Applicants have inserted "of said plurality of" before "ribs" and believe that this should cure any objection to claims 29 and 39.

### III. Double Patenting

The Office Action objected to certain claims as being substantial duplicates of each other. Applicants believe that the present amendments to some of those claims overcome any double patenting rejections posed by the Office Action.

#### IV. Claim Rejection under 35 USC 102 and 103

The Office Action rejected claims 22-24, 29-30, 32-34, 39-40 and 42-44 under 35 USC 102 or 103 as anticipated by or obvious in view of one or more of the following references: JP 10-53156 (JP '156); JP 10-71628 (JP '628); US 6,058,673 (Wycech); and US 6,267,436 (Takahara). Applicants traverse these rejections. Applicants have amended claims 22 and 32 to expedite prosecution. Applicants traverse the rejection of claim 40 with particularity.

##### Claim 40

The Office Action rejected claim 40 as being obvious over JP '156 in view of Takahara. Applicants traverse this rejection on the ground that the motivation to combine Takahara with JP '156 is legally inadequate to maintain an obviousness rejection.

The Court of Appeals for the Federal Circuit, in the case of In re Lee, 61 USPQ2d 1430 (CAFC 2002), wrote:

("Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.");...The need for specificity pervades this authority. See, e.g., In re Kotzab, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) ("particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed"); In re Rouffet, 149 F.3d 1350, 1359, 47 USPQ2d 1453, 1459 (Fed. Cir. 1998) ("even when the level of skill in the art is high, the Board must identify specifically the principle, known to one of ordinary skill, that suggests the claimed combination. In other words, the Board must explain the reasons one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious."); In re Fritch, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992) (the examiner can satisfy the burden of showing obviousness of the combination "only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references").

Applicants traverse the rejection of claim 40 on the ground that the motivation provided by the Office Action to combine JP '156 and Takahara is legally inadequate

to maintain the particular obviousness rejection presented. In particular, The Office Action suggests that, “It would have been obvious to...have provided the first portion of the skeleton member of JP ‘156, as modified, within the roof rail (whereby the second portion of the skeleton member extends into the A-pillar) as taught by Takahara ‘436 in order to provide additional reinforcement and strengthening support for this area of the vehicle.” Applicants contend that this rejection basically suggests that it would have been obvious to replace the member of Takahara with the member of JP ‘156. Applicants are of the opinion that the wholesale replacement of the member of JP ‘156 in place of the member of Takahara is tantamount to suggesting that it would be obvious to place the member of JP ‘156 in any location within an automotive vehicle without regard to the shape, size, or other special circumstances, which may be encountered in that particular location. In reality, there is no specific motivation in JP ‘156 or Takahara for situating the member of JP ‘156 in the particular position and location specified in claim 40. Moreover, there is no indication or suggestion that the member of JP ‘156 would even fit within or effectively reinforce or strengthen the vehicle at the location specified in claim 40. Due to the lack of proper motivation for combining JP ‘156 and Takahara, Applicants request that the rejection of claim 40 be withdrawn.

In addition to the above, Applicants traverse the rejection of claim 40 on the ground that the rejection itself is unclear. The rejection suggests some type of modification of the member of JP ‘156 (i.e., the rejection reads at page 10, ...the skeleton member of JP “156, as modified,...”). However, Applicants find no clear indication of how the Office Action is “modifying” the skeleton member of JP ‘156 for combination with Takahara. Applicants request that the rejection of claim 40 be withdrawn until such modification is clarified.

Furthermore, Applicant points out that it would likely be improper to present a final rejection of claims 40-44 on a grounds alternative to that already presented since applicants have not amended those claims in a manner, which would necessitate such alternative grounds. In particular, the MPEP reads:

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee..." MPEP 706.07(a)

Thus, any new grounds of rejection, "that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee..." would be improper.

#### V. New Claims

Applicants have added new claims 45-50 to address various aspects of the invention of the present application.

By amending the application, the Applicants do not concede that the patent coverage available to them would not extend as far as the original claim. Rather, Applicants intend to file a continuation application to pursue the breadth of the claims as filed. Applicants believe that the Examiner has not made a sufficient showing of inherency of the teachings of the asserted prior art, especially given the lack of teachings in the cited references of the properties that Applicants have recited in their claims.

Further, by the present amendment, it does not follow that the amended claims have become so perfect in their description that no one could devise an equivalent. After amendment, as before, limitations in the ability to describe the present invention in language in the patent claims naturally prevent the Applicants from capturing every nuance of the invention or describing with complete precision the range of its novelty or every possible equivalent. See, Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 62 USPQ2d 1705 (2002). Accordingly, the foregoing amendments are made specifically in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicants would otherwise be entitled.

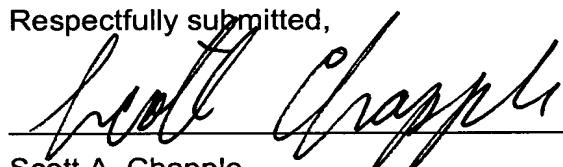
**CONCLUSIONS**

In view of Applicants' amendments and remarks, the Examiner's rejections are believed to be rendered moot. Accordingly, Applicants submit that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any question or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (248) 593-9900.

If for some reason Applicant has not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge our Deposit Account No. 50-1097 for any fee which may be due.

Respectfully submitted,

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